

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75 - 7662

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

JEROME J. WELLS,
EDWARD A. SWEETSER,
FRANCES M. BARBEAU,
WALTER HOLMES, CONRAD
MOORE, DAVID N.
O'CONNELL, LAURA MAY
NOYES, RONALD MILES
MAGONI, SHIRLEY A.
MARSH, ROBERT LEE BOOTH,
RAYMOND CHESTER LUCAS, JR.,
Appellants

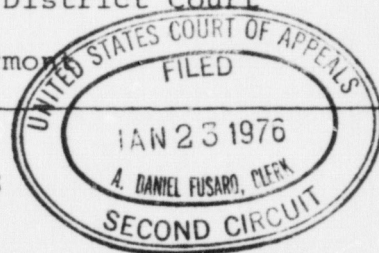
P/S

v.

JAMES E. MALLOY,
Commissioner of Motor
Vehicles of the State
of Vermont,
Appellee

On Appeal from the United States District Court
for the District of Vermont

BRIEF OF APPELLANTS



Roger E. Kohn, Esquire
P.O. Box 136
Hinesburg, Vermont 05461
Counsel for Appellant
Jerome Wells

Vermont Legal Aid, Inc.
150 Cherry Street
Burlington, Vermont 05401
Counsel for all other
Appellants

TABLE OF CONTENTS

I.	ISSUE PRESENTED-----	1
II.	OPINION BELOW-----	1
III.	STATEMENT OF THE CASE-----	1
IV.	ARGUMENT	
	A. The Statutory Setting-----	5
	B. Legal Analysis	
	1. Equal Protection Analysis-----	9
	2. Taxing Power Analysis-----	19
	C. Summary-----	24
V.	CONCLUSION-----	25
	ADDENDUM A -----	26
	ADDENDUM B -----	32

TABLE OF AUTHORITIES

Statutes

28 U.S.C. § 1341 -----	3
28 U.S.C. § 1331(a) -----	2
2 U.S.C. § 1343(3) -----	2
42 U.S.C. § 1983 -----	2
23 Vt. Stat. Ann. § 110 -----	8
23 Vt. Stat. Ann. § 301 et. seq. -----	6
23 Vt. Stat. Ann. § 604 -----	8
32 Vt. Stat. Ann. § 8903 -----	1,5,6
32 Vt. Stat. Ann. § 8905 -----	5,6,10
32 Vt. Stat. Ann. § 8907 -----	5
32 Vt. Stat. Ann. § 8909 -----	1,2,5,6, 9,17,19, 21
32 Vt. Stat. Ann. § 673, repealed by Act No. 147, 1967 -----	8

Other

Fourteenth Amendment -----	<u>Passim</u>
Annot. 62 A.L.R. 304-305 (1929) -----	13,20
2 <u>Cooley</u> , Taxation 828-29 (1903) -----	19
Note, Developments In The Law - Equal Protection, 82 Harv. L. Rev. 1065, 1082-1087 (1970) -----	9

CASES

Aquayo v. Richardson, 473 F.2d 1090, 1109 (2d Cir. 1973)	17
Aiken v. Malloy, 132 Vt. 200, 315 A.2d 488 (1974)	8,10
Bates v. Little Rock, 361 U.S. 516 (1960)	19,20
Baxstrom v. Herold, 383 U.S. 107, 111 (1966)	9
Bell v. Burson, 402 U.S. 353 (1971)	12,16
Bieling v. Malloy, — Vt. —, Docket No. 229-74 (October 7, 1975)	8,11
California Department of Mental Hygiene v. Kirchner, 400 P.2d 321 (Cal. 1965)	24
Campbell v. Goode, 2 S.E.2d 456 (Va. 1939)	21
Colorado v. Nothaus, 363 P.2d 180, 182 (Colo. 1961)	11,13
Creque v. Shulterbrandt, 121 F.Supp. 448, 451 (D.V.I. 1954)	19
Department of Revenue v. Williams, 351 S.W.2d 875 (Ky. 1961)	13
Earnhart v. Health, 369 F.Supp. 259 (E.D.Ark 1974)	13,14
Escobedo v. Department of Motor Vehicles, 35 Ca.2d 870, 222 P.2d 1 (1950)	13
Gompers v. Buck's Store & R. Co., 221 U.S. 418, 442-43 (1911)	15
Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966)	16,17,18
Hasegawa v. Mani Pineapple Co., 475 P.2d 679 (Hawaii. 1970)	24
In Re Nevitt, 117 Fed. 448, 459, 461 (8th Cir. 1902)	15
Leary v. United States, 395 U.S. 6, 36 (1969)	14
McNamara v. Malloy, 510 F.2d 74 (2d Cir. 1975)	3, 14

Cases

Miller v. Dupuy, 307 F.Supp. 166, 170 (E.D.Pa. 1969)	10,12
Miller v. Malloy, 343 F.Supp. 46 (D.Vt. 1972)	12,16
Milne v. Berman, 384 F.Supp. 206, 208-213 (S.D.N.Y. 1974), prob. jurisd. noted sub nom Lavine v. Milne, 45 L.Ed.2d 706 (1975)	14
Owen v. Roberts, 377 F.Supp. 45, 52-54 (M.D.Fla. 1974)	14
Parish v. East Coast Cedar Co., 45 S.E. 768 (N.D. 1903)	20
Reitz v. Mealey, 314 U.S. 33, 36 (1941)	11
Rinaldi v. Yeager, 384 U.S. 305, 309 (1966)	9
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)	16,21
Schoo v. Rose, 270 S.W.2d 940 (Ky. 1954)	13
Shapiro v. Thompson, 394 U.S. 618 (1969)	15,17, 18,22
Shaw v. Robinson, 64 S.W. 620 (Ky. 1901)	20
Shillitani v. United States, 384 U.S. 364, 371 (1966)	15
State v. Depres, 107 N.H. 297, A.2d 758, 760 (1966)	11
State v. Finley, 198 Kan. 585, 426 P.2d 251 (1967)	13
State v. Galveston, H. & S.A.Rv. Co., 97 S.W. 71 (Tex. 1906)	19,20
State v. Muzzv, 124 Vt. 222, 224, A.2d (1964)	11
Stilinovic v. United States, 336 F.2d 862 (8th Cir. 1964)	19,20
Town of Hartland v. Damon's Estate, 103 Vt. 519, 525, 156 A. 518 (1919)	19
United States v. Guest, 383 U.S. 745, 757-759 (1966)	15
United States v. Kras, 409 U.S. 434 (1973)	16,24
United States v. Smith, 62 F.Supp. 594 (W.D. Mich. 1945)	20

Cases

Vlandis v. Kline, 412 U.S. 441, 458 (White, J., concurring)	16
Waters Pierce Oil Co. v. Texas, 212 U.S. 86 (1908)	19
Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 173 (1972)	17
Wells v. Malloy, 510 F.2d 74 (2d Cir. 1975)	3,14
Wilson v. McKenna, 52 Ill. 43 (1869)	20
Wright v. Malloy, 343 F.Supp. 46 (D.Vt. 1972)	12,16

I. ISSUE PRESENTED

Whether a Vermont statute requiring the suspension of motor vehicle operators' licenses solely because of the failure to pay a tax on the purchase and use of a certain motor vehicle, which statute is applied to persons who are financially unable to pay such a tax, violates the fourteenth amendment to the United States Constitution.

II. OPINION BELOW

The opinion of the United States District Court for the District of Vermont, per Albert W. Coffrin, District Judge, has apparently not yet been reported. It is reproduced in the Appendix, at pages 42 - 56.

III. STATEMENT OF THE CASE

Appellants (hereinafter referred to as "plaintiffs") are individuals whose Vermont motor vehicles operators' licenses have been suspended pursuant to 32 Vt. Stat. Ann. §8909 for failure to pay the tax established by 32 Vt. Stat. Ann. §8903, commonly referred to as the "motor vehicle purchase and use tax".

Alleging that he was financially unable to pay this tax, that he required his motor vehicle operator's license "to visit the doctor, shop for groceries, and for other necessities

and amenities of daily life," that no other members of his family residing with him possessed a driver's license, and that he suffered "tremendous hardship, and irreparable and immediate harm from the continued suspension of his license," plaintiff Jerome Wells brought this action against the Commissioner of Motor Vehicles of the State of Vermont in the United States District Court for the District of Vermont, on behalf of himself and all persons similarly situated. Plaintiff Wells claimed that 32 Vt. Stat. Ann. §8909 denied him equal protection of the laws in that it established a classification not reasonably related to the purpose of the motor vehicle licensing statutes. He requested that a three-judge district court be convened, that 32 Vt. Stat. Ann. §8909 be declared unconstitutional, and that a preliminary and permanent injunction be issued requiring the resoration of his motor vehicle driver's license and the rights attendant thereto. Alleging civil rights and federal question jurisdiction, pursuant to 28 U.S.C. §1343(3) and 1331(a), the action was brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983, and pursuant to the fourteenth amendment to the United States Constitution.^{1/}

The Commissioner of Motor Vehicles answered, denying that the challenged statute was unconstitutional, and alleging that the complaint failed to state a claim upon which relief

^{1/} Plaintiff's Complaint is reproduced at pages 6-12 of the Appendix.

could be granted, and that civil rights and federal question jurisdiction did not exist.^{2/}

Pursuant to a stipulation^{3/} between the parties, a temporary restraining order was issued by the court, prohibiting the continued suspension of Wells' driver's license.^{4/} Also pursuant to a stipulation, Wells withdrew his class action allegations, the Commissioner agreeing to apply any relief granted to Wells to all persons similarly situated.^{5/} The other plaintiffs subsequently intervened in this action, and each obtained a temporary restraining order.

A single judge of the district court held that plaintiffs were attempting to enjoin the collection of a state tax, and that 28 U.S.C. §1341 accordingly barred relief.^{6/} On appeal, this court held that 28 U.S.C. §1341 applied only to direct tax collection methods, rather than a more general use of coercive power, and that the district court thus had jurisdiction to decide whether plaintiffs' license should be reinstated; the cause was therefore reversed and remanded with instructions to request the convening of a three-judge court. Wells v. Malloy, 510 F.2d 74 (2d Cir. 1975).^{7/}

^{2/} Appendix at 18-19.

^{3/} Appendix at 14-15.

^{4/} Appendix at 16-17.

^{5/} Appendix at 20-21.

^{6/} Appendix at 22-29.

^{7/} Appendix at 31-36.

The parties subsequently obviated the necessity of convening a three-judge court, by stipulating that the plaintiffs could amend their complaints to omit any request for injunctive relief, the defendant agreeing to administer the challenged statute in accordance with any declaratory judgment which might be issued.^{8/} The parties also stipulated that, for the purposes of determining the constitutionality of the statutes challenged by plaintiffs, the facts alleged by plaintiffs in their complaints could be taken as true.^{9/} This included plaintiffs' claims that they are "financially unable to pay the said Purchase and Use Tax."^{10/} Also admitted were the allegations of plaintiff Wells that he requires his motor vehicle driver's license to visit the doctor, shop for groceries, and for other necessities and amenities of daily life; that no other member of his family residing with him has a driver's license; and that he would suffer tremendous hardship from the continued suspension of his license.^{11/} The allegations of the intervening plaintiffs were similar,^{12/} and were also admitted.

Plaintiffs then moved for summary judgment.^{13/} By opinion filed October 24, 1975, the district court held that the

^{8/} Appendix at 38-39.

^{9/} Appendix at 40.

^{10/} Appendix at 8. The Complaints of intervening plaintiffs are identical in this respect to the Complaint of plaintiff Wells (the Complaints of intervening plaintiff are not reproduced in the Appendix because they are substantially the same as the Complaint of Plaintiff Wells).

^{11/} *Id.*

^{12/} For example, intervening plaintiff Noyes requires her license to transport her children to school and to shop for groceries, as well as for other necessities and amenities.

^{13/} Appendix at 41.

challenged statute was constitutional, granted summary judgment for defendant, and dissolved the temporary restraining orders.^{14/} This appeal resulted.^{15/}

IV. ARGUMENT

A. The Statutory Setting

32 Vt. Stat. Ann. §8903, read with 32 Vt. Stat. Ann. §8907, imposes a tax on the purchase or use of a motor vehicle in Vermont based, in general, upon the purchase price thereof, or, if acquired by gift or if the motor vehicle is being brought into the state after use elsewhere, the actual retail value thereof.^{16/} A monetary penalty is assessed if the tax is not timely paid. 32 Vt. Stat. Ann. §8905(c). The Commissioner of Motor Vehicles is authorized to bring a civil action to collect the tax and any penalty, and to suspend the driver's license of any individual who does not pay the tax and penalty:

If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.

^{14/} Appendix at 42-56. The parties subsequently stipulated that the temporary restraining orders would remain in effect until the termination of the litigation. Appendix at 59-60.

^{15/} Appendix at 58.

^{16/} All relevant statutes are reproduced to the end of this brief. Addendum A sets forth the statutes in force on the date this action was filed. Addendum B sets forth recent statutory amendments.

32 Vt. Stat. Ann. §8909. Only that portion of this statute which permits the suspension of plaintiffs' drivers' licenses is challenged in the case at bar.^{17/}

It is important to note that 32 Vt. Stat. Ann. §8909 requires the suspension of a driver's license for failure to pay the tax; at the time this action was filed it did not provide for the suspension of an automobile registration (23 Vt. Stat. Ann. §301 et seq.).^{18/} Thus if an individual fails to pay the purchase and use tax on a given automobile, he is deprived not only of the right to drive that automobile, but also the right to drive any other automobile - he cannot even drive a borrowed

^{17/} The validity of 32 Vt. Stat. Ann. §8903 is not an issue in this case. It should be noted, however, that this tax under certain circumstances is quite oppressive, and may itself be constitutionally infirm. An individual who resides in another state and purchases an automobile must usually pay to that state a sales tax. If he should move to Vermont immediately after purchasing the vehicle he must pay Vermont a "use" tax, measured as a percentage of the purchase price, even though an individual purchasing a vehicle in Vermont is exempted from the "use" tax. In effect, therefore, 32 Vt. Stat. Ann. §8903(b) is either a sales tax on vehicles purchased out of state or a use tax which only certain residents (viz. those moving to the state) must pay.

^{18/} The Vermont legislature recently amended 32 Vt. Stat. Ann. §8905, effective July 1, 1976, so as to prohibit the registration of an automobile for which the purchase and use tax has not been paid. 32 Vt. Stat. Ann. §8905(a)(Supp. 1975); Addendum B. Although the penalty of license suspension challenged in the present case would therefore appear to be of little use subsequent to July 1, 1976, 32 Vt. Stat. Ann. §8909 was not changed by the legislature. The challenged statute will thus continue to affect the plaintiffs in this case and others who owe tax from previous vehicle purchases: there are, however, likely to be only rare instances in which the outcome of the present litigation will affect a vehicle purchaser after said date.

car on an errand. An individual who never purchased a car can drive his friend's car without paying a tax; the plaintiffs in this action, on the other hand, are not permitted by the statute to do so. Moreover, the suspension need not take place immediately upon non-payment but can take place years later.^{19/} A relatively long lapse of time, in fact, appears to be the usual course of events. Accordingly, the state requires suspension of an individual's right to drive any car for any purpose because the individual failed to pay the tax on an automobile he long ago purchased and disposed of - or even an automobile purchased for a child or other family member, but registered in his name.^{20/}

The challenged penalty therefore is unrelated to the purposes of the purchase and use tax. The tax is either simply a revenue-producing device or is designed to make owners of vehicles pay for part of the cost to the state resulting from the use of the vehicle. The penalty arguably related to the purpose of the tax - loss of automobile registration - is not the one chosen. The question then becomes: "For what reasons can the state suspend a motor vehicle operator's license?".

^{19/} Plaintiff Jerome Wells, for example, purchased the vehicles upon which he owes the purchase and use tax approximately a year prior to first receiving notice that his license would be suspended for failure to pay the tax. It is also believed that there are a number of persons for whom the time lapse would be as much as several years.

^{20/} This example is used because several of the plaintiffs have had their licenses suspended for failure to pay the tax on cars actually "owned" by their sons, but registered in their names.

A driver's license being such a crucial necessity in Vermont,^{21/} the suspension thereof is a particularly coercive measure. Recognizing this, the Vermont legislature has not confined the suspension of drivers' licenses solely to coercion of payment of a purchase and use tax.^{22/} Suspension, for example, is the remedy "whenever any check issued [to the motor vehicles department] in payment of any fee or for any other purpose" is not honored. 23 Vt. Stat. Ann. §110. Similarly, failure to pay a "poll tax" (which is a head tax assessed annually) results in suspension of one's driver's license. 23 Vt. Stat. Ann. §604.^{23/} Accordingly, the suspension of motor vehicle operators' licenses challenged in the instant case is not a sole attribute of the Vermont purchase and use tax, but is a penalty^{24/} utilized by the Vermont legislature for a number of purposes.

^{21/} See McNamara v. Malloy, 337 F. Supp. 722, 735 n.7 (D. Vt. 1971): "Moreover, plaintiff Gable's very survival is at stake since Vermont is famous for its long winters and deep snows, and the nearest place that he can purchase food and other necessities is at least three miles from his home."

^{22/} Until relatively recently, a welfare recipient, or even a former welfare recipient who was no longer receiving welfare, could have his driver's license suspended for his status as a recipient. 32 Vt. Stat. Ann. §673, repealed by Act No. 147, 1967.

^{23/} The constitutionality of this provision was recently upheld by the Vermont Supreme Court. Bieling v. Malloy, _____ Vt. _____, Docket No. 229-74 (October 7, 1975).

^{24/} The Vermont Supreme Court considers license suspension a "penalty", at least in the poll-tax setting: "[T]he legislature has provided the operator's license suspension as a penalty for non-payment as a weapon in the arsenal of the town tax collector to collect that tax." Aiken v. Malloy, 132 Vt. 200, 206, 315 A2d 488 (1974). See also Bieling v. Malloy, _____ Vt. _____, Docket No. 229-74 (October 7, 1975).

If 32 Vt. Stat. Ann. §8909 is constitutional, it is difficult to see how there can be any limit to the state's power to suspend operators' licenses. For example, suspension could be required for failure to pay property taxes; real estate transfer taxes; state income taxes; or even failure to pay tuition charges at the University of Vermont.

B. Legal Analysis

1. Equal Protection Analysis

The classic formulation of the equal protection clause of the fourteenth amendment requires not only a rational basis for the statute in question, but also that the statute have some "relevance to the purpose for which the classification is made." Baxstrom v. Herold, 383 U.S. 107, 111 (1966); Rinaldi v. Yeager, 384 U.S. 305, 309 (1966). See generally Note, Developments in the Law - Equal Protection, 82 Harv.L.Rev. 1065, 1082-1087 (1970). Accordingly, it is not enough to conclude that the state had some rational reason for enacting section 8909;^{25/} equal protection also requires a rational relationship to the motor vehicle licensing laws. Section 8909 divides persons into classes of those who have paid the tax and those who have not, for the purpose of determining who may operate a motor vehicle. But there is no rational basis underlying section 8909 which is relevant to such a purpose.

^{25/} Moreover, there is no such rational reason, as discussed on page 14, infra.

To be sure, the state has a clear interest in requiring an individual who purchases a vehicle to pay his share of the costs attendant upon the use of the vehicle, or else require him to forgo use of the vehicle, as 32 Vt. Stat. Ann. §8905 provides, effective July 1, 1976.^{26/} But in conditioning drivers' licenses, rather than automobile registration, upon payment of the purchase and use tax, the Vermont legislature has established an unreasonable classification. Person "X" has never paid a purchase and use tax, because he has never purchased a car. Person "X" can therefore drive his friend's car all day long. Person "Y" has also not paid a purchase and use tax, but he long ago purchased a car which he has since sold. He cannot driver his friend's car even for a moment. There is a difference between person "X" and person "Y"; viz., one owes the state some money. But if that were a sufficient rationale, persons who owe property taxes, or even money pursuant to contract claims with the state, could be prohibited from driving. The point is that there is no difference between person "X" and person "Y" with relation to the purposes underlying the motor vehicle licensing laws.

Pursuant to its police power, the state has authority to subject the operation of motor vehicles to reasonable regulations and conditions in the interest of public safety. E.g., Miller v. Depuy, 307 F. Supp. 166, 170 (E.D. Pa. 1969); Aiken v.

^{26/} See note 18, supra.

Malloy, 132 Vt. 200, 206, 315 A.2d 488 (1974); State v. Depres, 107 N.H. 297, 220 A.2d 758, 760 (1966); State v. Muzzy, 124 Vt. 222, 224, 202 A.2d 267 (1964); but see Bieling v. Malloy, _____ Vt. _____, Docket No. 229-74 (October 7, 1975). As Muzzy stated:

The right to operate a motor vehicle upon a public street or highway is not a natural or unrestrained right but a privilege which is subject to reasonable regulation under the police power of the state in the interest of public safety and welfare.

124 Vt. at 224. Pursuant to this authority, the state may require the operators of motor vehicles to be licensed, and it may subject them to reasonable regulations designed to ensure that such licensees are competent drivers, willing and able to operate their vehicles in a safe and responsible manner, so as not to endanger the traveling public. As the United States Supreme Court stated in Reitz v. Mealey, 314 U.S. 33, 36 (1941):

Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process.

Non-payment of a purchase and use tax, on the other hand, bears no relationship to an operator's safe and responsible conduct on the road. While a state may, in the exercise of its police power, revoke the license of an individual for failure to conform to reasonable regulations for the protection of the public safety, it may not do so for unrelated reasons. As the court stated in Colorado v. Nothaus, 363 P.2d 180, 182 (Colo. 1961):

Regulations imposed upon the right of the citizen to make use of the public highways must have a fair relationship to the protection of the public safety in order to be valid. . . . [A licensee] has a right to continue in the full enjoyment of that right until by due process of law it has been established that by reason of abuse of the right or other just cause it is reasonably necessary in the interest of the public safety to deprive him of the right to drive a motor vehicle on the highways.

In Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969), the Eastern District of Pennsylvania held unconstitutional, as a violation of equal protection and due process, the suspension of an individual's operator's license and automobile registration resulting from the failure to satisfy a judgment rendered against him on a respondent superior basis. As the judgment was solely based on the plaintiff's vicarious liability for the actions of his employee, the court was unable to find any relationship to the protection of public safety, and it held the statute unconstitutional, as applied to the plaintiff. The court concluded that:

the state's exercise of the police power to promote safety on the highway can in no direct and compelling way be served by suspending a persons' ownership certificate and operator's license where in fact he has not been shown to be in any way an unsafe driver.

307 F.Supp. at 170 (emphasis in original).^{27/}

^{27/} Although the Supreme Court did not discuss the equal protection issue in Bell v. Burson, 402 U.S. 353 (1971), other courts have upheld (subject to compliance with due process requirements) a state's power to suspend licenses for failure to comply with the state's financial responsibility requirements. Wright v. Malloy, 373 F.Supp. 1011 (D. Vt. 1974); Miller v. Malloy, 343 F.Supp. 46 (D. Vt. 1972); (continued on page 13)

In Schoo v. Rose, 270 S.W.2d 940 (Ky. 1954), the court invalidated, as a special tax law, a statute which denied a motor vehicle registration to a person who had failed to pay personal property tax assessed against him with respect to any personal property. The court stated:

We are unable to perceive wherein the obligations and duties imposed by this Act bear any reasonable relationship to accomplishment of a valid regulatory function such as may be designated as an exercise of the State's police power. Making the right to operate an automobile upon the public highways of the State dependant upon whether a person has paid his personal property tax other than on the vehicle to be licensed seems to us to have no relation to any of the subjects to which the police power extends.

270 S.W.2d at 943. See also Department of Revenue v. Williams, 351 S.W.2d 875 (Ky. 1961).

Where the registration was denied for failure to pay property tax assessed with respect to the motor vehicle itself, earlier cases have upheld such denials. See Annot. 62 A.L.R. 304-305 (1929). In contrast to the statute challenged in the case at bar, however, the statutes challenged in these cases prohibited only the use of the specific vehicle against which the tax had been assessed. They did not prevent the taxpayer from driving other vehicles, which is the prohibition that gives rise to the equal protection violation. In Earnhart v. Heath, 369 F.Supp. 259 (E.D. Ark. 1974), the court upheld the suspension

27 cont'd/ State v. Finley, 198 Kan. 585, 426 P.2d 251 (1967); Escobedo v. Department of Motor Vehicles, 35 Cal.2d 870, 222 P.2d 1 (1950); but see Colorado v. Nothaus, 363 P.2d 180 (Colo. 1961). Where they have been upheld, the courts have found such statutes to be reasonable provisions to protect the financial safety, if not the physical safety, of users of the public highways, and thus reasonable exercises of the state's police power, in the interest of public safety.

of motor vehicle registration for failure to pay all personal property taxes, including those on the vehicle in question. Earnhart, however, also involved automobile registration rather than drivers' licenses, and since the tax included the tax on the vehicle itself, there was a closer relationship between the tax and the penalty than is true in the instant case.

Even were only the rationality of the legislative action to be considered, and the purpose of the classification ignored, an analysis of section 8909 shows that it cannot withstand equal protection attack. The facts of the instant case, as stipulated, are that plaintiffs are financially unable to pay the tax.^{28/} It is true that the Vermont legislature may have "believed that the sanction of revocation of a driver's license, like the older method of imprisonment for debt, might cause some money to be produced from somewhere, despite a taxpayer's protest that he has none." Wells v. Malloy, 510 F.2d 74, 77 (2d Cir. 1975). But, given the facts of this case, any legislative assumption that the coercive remedy, despite its harshness, would be successfully coercive in all cases is an unjustified irrebutable presumption, and, as such, is constitutionally defective. See, e.g., Milne v. Berman, 384 F.Supp. 206, 208-213 (S.D.N.Y. 1974), prob. jurisd. noted sub nom, Lavine v. Milne, 45 L.ed.2d 706 (1975); Owens v. Roberts, 377 F.Supp. 45, 52-54 (M.D. Fla. 1974); Leary v. United States, 395 U.S. 6, 36 (1969).

^{28/} See page 4, supra.

Not only have the licenses of plaintiffs been suspended for a failure they cannot rectify in light of their financial circumstances, but the legislative penalty tends to deprive them of their ability to earn a living, and thus obtain funds to pay the tax which is due. Nor is the district court's analysis persuasive: to suspend an individual's license, despite his present inability to pay the tax, because he may someday have the ability to pay is not only to speculate about what may or may not come to pass, but also to be arbitrary and unreasonable (as well as exceedingly harsh) as regards the individual in his present financial straits. The district court's analogy to civil contempt is apt - and the law is clear that civil contempt requires the present ability of the contemnor to purge himself - not a possibility that he may some day be able to do so. See, e.g., Shillitani v. United States, 384 U.S. 364, 371 (1966); Gompers v. Buck's Stove & R. Co., 221 U.S. 418, 442-43 (1911); In Re Nevitt, 117 Fed. 446, 459, 461 (8th Cir. 1902).

Moreover, in analyzing the equal protection issue, it should be remembered that the right to operate a motor vehicle directly involves the right to travel, which has consistently been afforded preferred constitutional status. United States v. Guest, 383 U.S. 745, 757-759 (1966); Shapiro v. Thompson, 394 U.S. 618 (1969). In addition, the continued possession of an operator's license "may be come essential in the pursuit of a

livelihood." Bell v. Burson, 402 U.S. 535, 539 (1971)^{29/}
 Finally, the classification established by the Vermont legislature is based on wealth: individuals, such as plaintiffs, who cannot afford to pay the tax cannot drive, but those who can afford to pay the tax may do so. Despite the impact of United States v. Kras, 409 U.S. 434 (1973), and San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), on the status of wealth as a suspect classification pursuant to Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), the cumulative effect of such a direct impact on the right to travel and the right to earn a livelihood, coupled with the wealth classification, surely requires close scrutiny of the challenged statute to determine its constitutionality. See Miller v. Malloy, 343 F. Supp. 46 (D. Vt. 1972); Wright v. Malloy, 373 F. Supp. 1011 (D. Vt. 1974)^{30/}, aff'd, 419 U.S. 987 (1974).^{30/}

It may be that the Supreme Court has replaced the "compelling state interest" test with a "continuum" or "balancing" analysis requiring closer scrutiny of the statute in question as more fundamental rights are impacted. See Vlandis v. Kline, 412 U.S. 441, 458 (White, J., concurring); Aguayo v. Richardson, 473

^{29/} "Once licenses [of motor vehicle operators] are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued license thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." 402 U.S. at 539.

^{30/} Contrary to the analysis of the district court, the present case is a fortiori to Miller, in that the plaintiff in Miller was incarcerated, and therefore his personal liberty was only affected indirectly. The three-judge court in Miller directly pointed this out: "We are willing to accept plaintiff's assertion that his person liberty is, very indirectly to be sure (since he is in a correctional center for his own actions), somewhat affected. . . ." 343 F.Supp. at 50.

F.2d 1090, 1109 (2d Cir. 1973). Nevertheless, whether the "compelling state interest" test is utilized, or whether 32 Vt. Stat. Ann. §8909 is simply viewed in light of the fundamental rights involved, the statute cannot survive constitutional scrutiny.

As the Supreme Court stated in Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 173 (1972):

The essential inquiry . . . is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental rights might the classification endanger?

Consider, then, the competing interests involved herein. Arrayed on one side is the right to travel, the right to earn one's livelihood, the right not to be subject to wealth discrimination absent the most compelling cause, and more generally, the right to liberty. What state interests can be marshalled against these important rights? Merely the right to collect a tax by a means which is, as now recognized by the Vermont legislature itself,^{31/} not even as effective as the constitutionally permissible means readily at hand - the refusal to register the vehicle in the first place.^{32/}

^{31/} See footnote 18, supra.

^{32/} A traditional "compelling state interest" analysis would be as follows: Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) and Shapiro v. Thompson, 394 U.S. 618 (1969), as well as the cases which build upon them, demonstrate that collection of a tax or similar fiscal considerations, are not compelling state interests. Moreover, the state must go further under strict scrutiny review, and demonstrate that less restrictive alternatives are not available. This cannot be done in the present case, because (footnote 32 continued on page 18)

Harper v. Virginia State Board of Elections, 383 U.S. 662 (1966) is instructive. Even though the Supreme Court has perhaps considered the right to vote as primus inter pares of the fundamental rights, the Harper analysis is directly on point: failure to pay a tax has no more to do with driving qualifications than it has to do with voting qualifications.^{33/}

Of course, the purchase and use tax supports the highway fund. But if the poll tax were used to purchase voting booths, would Harper have been decided differently? And - what is more important - the fact that the purchase and use tax may help build or maintain highways is irrelevant because the penalty of drivers' license suspension does not apply to all who have not contributed to the highway fund by payment of a purchase and use tax, but only to those who have purchased a car and failed to pay the tax: to keep a person from burdening the highways with another car without paying the tax thereon is just; but to prohibit only this class of person from driving a vehicle for which the tax has been paid, while allowing all others to operate such a vehicle, is manifestly unjust - and constitutionally invalid.

³² cont'd/ the statute itself provides for a civil action to collect the tax, and the legislature has now provided the constitutionally permissible and even more effective sanction of prohibiting registration of the vehicle itself. And, in any event, administrative convenience is not grounds for refusing to utilize alternatives which do not impinge on constitutional freedoms. Shapiro v. Thompson, supra.

^{33/} "Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax." 383 U.S. at 666.

2. Taxing Power Analysis

The unconstitutionality of 32 Vt. Stat. Ann. §8909 also becomes apparent upon analysis of the underlying authority for the enactment of section 8909. That this statute is not based on the police power has previously been made clear,^{34/} the police power resting on reasonable regulation in the interest of public safety. The question then becomes: "What are the limits of the taxing power?"

Basically, the limits on the taxing power are that the penalties or enforcement device must be reasonably related to the tax involved, and must not be excessive, arbitrary or unreasonable; otherwise, the due process clause of the fourteenth amendment would be violated. See, Bates v. Little Rock, 361 U.S. 516 (1960); Stilinovic v. United States, 336 F.2d 862 (8th Cir. 1964); Creque v. Shulterbrandt, 121 F.Supp. 448, 451 (D.V.I. 1954); Town of Hartland v. Damon's Estate, 103 Vt. 519, 525, 156 A.518 (1919); State v. Galveston H. & S.A. Ry. Co., 97 S.W. 71 (Tex. 1906); cf. Waters Pierce Oil Co. v. Texas, 212 U.S. 86 (1908).

Where the penalty or collection device bears some relationship to the direct collection of revenue or to a forfeiture of the privilege taxes, these criteria are met. Thus summary collection methods such as distraint of property, which produce directly the tax revenue sought, have been uniformly upheld. 2 Cooley, Taxation 828-29 (1903). Revocation of a

^{34/} See pages 10-14 , supra.

privilege which is taxed has also been upheld because of the direct relationship between the privilege and the tax. See, e.g., Annot., 62 A.L.R. 304-05 (1929). On the latter theory, revocation of automobile registrations for failure to pay a tax on the vehicle has been upheld because the tax is on the privilege of using the vehicle. See United States v. Smith, 62 F.Supp. 594 (W.D. Mich. 1945). Similarly, a liquor tax that prohibits re-filing of liquor bottles is valid because it protects against evasion of the tax and thus "bears a reasonable relationship" to the collection of the tax. See Stilinovic v. United States, 336 F.2d 862 (8th Cir. 1964).

On the other hand, various penalty provisions have been held invalid because the penalty was disproportionate to the offense. Courts have struck down statutes allowing total forfeiture of land without sale and distribution of proceeds for non-payment of real property taxes on the land. See Parish v. East Coast Cedar Co., 45 S.E. 768 (N.C. 1903); Shaw v. Robinson, 64 S.W. 620 (Ky. 1901). They have struck down statutes barring land owners from bringing suit against interference with their possessory interest unless they have paid all taxes. See, e.g., Wilson v. McKenna, 52 Ill. 43 (1869). Further, they have struck down excessive monetary penalties, disproportionate in amount to the tax owed. See State v. Galveston, H. & S.A.Ry. Co., 97 S.W. 71 (Tex. 1906).

Moreover, the usual tax statutes, with which the above cases are concerned, do not burden the right to travel and the other fundamental personal liberties previously discussed; when faced with these societal values, the special liberality which is usually applied to taxing statutes ^{35/} is misplaced.

To be sure, the Vermont Supreme Court has upheld the constitutionality of the suspension of operators' licenses for failure to pay the Vermont poll tax, at least as to individuals who can afford to pay the tax. Bieling v. Malloy, ____ Vt. ____ Docket No. 229- (Oct. 7, 1975).^{36/}

The Vermont Supreme Court, however, would apparently also allow imprisonment for failure to pay the poll tax. Id., slip op. at 3, 6. Hopefully, the Vermont Supreme Court is in error as to the permissibility of both these penalties. And where, as here, the individual is financially unable to pay the tax, both these penalties certainly cannot be constitutionally valid.

The penalty imposed by section 8909 is unrelated to the tax involved: although the purchase and use tax contributes to the highway fund, the tax is not on the right to use the

^{35/} See, e.g., San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 40-41 (1973).

^{36/} Compare Campbell v. Goode, 2 S.E. 2d 456 (Va. 1939), in which the court, invalidating on other grounds a provision forfeiting an attorney's license to practice law for failure to pay poll taxes, stated: "we think it worth noting that the assessment of the poll tax has no relation whatsoever to the right to practice law."

highways, but rather on the right to own or use a given motor vehicle.^{37/}

In addition, the loss of the right to drive is excessive, arbitrary, and unreasonable. The district court concludes that the suspension of the right to drive is no more harsh than the inability to register a car. In addition to disagreeing with the analysis of the practicalities of borrowing a car on occasion versus obtaining the services of a friend to drive, the district court's analysis ignores the fact that at least some of the plaintiffs herein, and most likely many of the persons affected by the statute, have other cars for which they have paid the purchase and use tax: in some cases the individuals have more than one car; in some cases the cars for which the tax had not been paid have long ago been exchanged for other automobiles; and in some cases the cars in question were

^{37/} Shapiro v. Thompson, 394 U.S. 618 (1969), indicates that equal protection does not permit the allocation of governmental services based on tax contributions.

Appellants' reasoning would logically permit the state to bar new residents from school, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The equal protection clause prohibits such an apportionment of state services.

394 U.S. at 632-3 (emphasis supplied).

actually "owned" by plaintiffs' children, but registered in plaintiffs' names. Moreover, the fact that, until July 1, 1976, the penalty for failure to pay a purchase and use tax is the suspension of a motor vehicle operator's license rather than a refusal to register the automobile, and the method by which the challenged statute is administered, make it particularly likely that there will be some individuals who cannot afford to pay the tax and who will therefore lose their motor vehicle operators' licenses. If an individual could not register the automobile he purchased until the tax thereon had been paid, it is likely that he would simply not purchase the car until he could afford to pay the tax; it is also likely that an individual who is purchasing an automobile is doing so at a time when he can afford to pay an extra four percent as a tax. Under the present system, however, a person can purchase and register a car, and yet not undergo the penalty until a substantial period of time has passed.

Vermont is a rural state, with very little public transportation. Traveling distances between dwellings and necessary services or employment are often great. Inability to drive may mean inability to reach sources of medical services, food, clothing, and the like, and loss of employment. Balanced against this is the failure to pay a small tax; and in the instant case, this failure results from inability rather than willfulness. The statutes permit a penalty to be assessed for

ROGER E. KOHN
ATTORNEY AT LAW

P. O. BOX 136
WINDSBURG, VERMONT
05481

failure to pay the tax, and a civil action may be brought to collect it. As of July 1, 1976, the automobile may not be registered until the tax is paid.

In the light of the competing interests involved, revocation of the right to drive for failure to pay the purchase and use tax exceeds the taxing power and is a denial of due process of law.

C. Summary

This case does not involve the question whether an individual, even though poor, must pay for societal benefits received. United States v. Kras, 409 U.S. 434 (1973), squarely faced that issue, and, in the context of that case, answered the question in the affirmative. What is involved here is a different issue: whether a range of societal benefits can be withdrawn because a person is too poor to pay for one specific, different, societal benefit. Plaintiffs contend that the answer to this question must be in the negative.^{38/}

The plaintiffs herein may be too poor to be allowed to own a car; they should not for that reason be denied the right to drive a car owned by another. To discriminate against them in such a manner is arbitrary and unconstitutional.

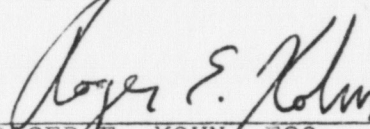
^{38/} Cf. footnote 37, *supra*; California Department of Mental Hygiene v. Kirchner, 400 P.2d 321 (Cal. 1965); Hasegawa v. Mani Pineapple Co., 475 P.2d 679 (Hawaii 1970).

V. CONCLUSION

For the reasons set forth above, plaintiffs respectfully request that the decision of the United States District Court for the District of Vermont be reversed, and that an order be entered declaring unconstitutional 32 Vt. Stat. Ann. §8909, insofar as it permits the suspension of plaintiffs' drivers' licenses.

Dated: January 20, 1976.

Respectfully submitted,



ROGER E. KOHN, ESQ.
P. O. Box 136
Hinesburg, Vermont 05461

Counsel for Jerome Wells

VERMONT LEGAL AID, INC.
P. O. Box 562
Burlington, Vermont 05401

Counsel for all other appellants

ADDENDUM A

VERMONT STATUTES ANNOTATED, TITLE 32, CHAPTER 219.
"MOTOR VEHICLE PURCHASE AND USE TAX."
AS AMENDED AS OF THE DATE THIS ACTION WAS FILED.

§ 8901. Purpose

This is an act to impose a purchase and use tax on motor vehicles in addition to any other tax or registration fees. The purpose of this chapter is to thereby improve and maintain the state and interstate highway systems, to pay the principal and interest on bonds issued for the improvement and maintenance of those systems and to pay the cost of administering this chapter. The administration of this chapter is vested in the commissioner of motor vehicles and his authorized representatives. The commissioner may prescribe and publish regulations to carry into effect the provisions of this chapter, which regulations, when reasonably designed to carry out the intent of this chapter, shall have the same force as if enacted herein.—1959, No. 327 (Adj. Sess.), § 1, eff. March 1, 1960.

§ 8902. Definitions

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

(1) "Commissioner"—the commissioner of motor vehicles.

(2) "Resident"—resident shall include all legal residents of this state and in addition thereto any person who accepts employment or engages in a trade, profession or occupation in this state for a period of at least six months. Also in addition thereto any foreign partnership, firm, association or corporation doing business in this state shall be deemed to be a resident as to all vehicles owned or leased and ordinarily used by it in connection with its place of business in this state. Resident shall not include any person, firm or corporation not required to register motor vehicles by reason of any reciprocity provision with any other state.

(3) "Purchase or purchasing, sale or selling"—any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle for a consideration, including transactions whereby the possession of the property is transferred but the seller retains the title as security for the payment of the purchase price.

(4) "Purchase price"—the gross consideration, exclusive of the tax hereby imposed, which is to be paid for the motor vehicle, expressed in terms of United States currency as of the time of the sale, and shall include the cash consideration, if any, plus the value of any services or property given or to be given, or both, in exchange for the motor vehicle.

(5) "Taxable cost"—the purchase price for a motor vehicle purchased, or as determined under section 8907 of this title if acquired in any other manner, less

(A) the value allowed by the seller on any motor vehicle accepted by him as part of the consideration of the motor vehicle, provided the motor vehicle accepted by the seller is owned and previously or currently registered by the purchaser, with no change of ownership since registration, except for motor vehicles for which registration is not required under the provisions of Title 23 or motor vehicles received under the provisions of section 8911(8) of this title;

(B) the amount received from the sale of a motor vehicle then registered in his name, the amount not to exceed the average book value of the same make, type, model and year of manufacture as designated by the manufacturer and as shown in the official used car guide, National Automobile Dealers Association (New England edition), provided such sale occurs within three months of the taxable purchase. Such amount shall be reported on forms supplied by the commissioner of motor vehicles;

(C) the amount actually paid to the purchaser within three months prior to the taxable purchase by any insurer under a contract of collision, comprehensive or similar insurance with respect to a motor vehicle owned by him provided that one of these events occur:

(i) the motor vehicle with respect to which such payment is made by the insurer is accepted by seller as a trade-in on the purchased motor vehicle before the repair of the damage giving rise to insurer's payment, or

(ii) the motor vehicle with respect to which such payment is made to the insurer is treated as a total loss and is sold for dismantling;

(D) a purchaser shall be entitled to a partial or complete refund of taxes paid under this chapter if an insurer makes a payment to him under contract of collision, comprehensive or similar insurance after he has paid the tax imposed by this chapter if such payment by the insurer is either:

(i) on account of damages to a motor vehicle which was accepted by seller as a trade-in on the purchased vehicle before repairs of the damage giving rise to the insurer's payment, or

(ii) on account of damages for the total destruction of a vehicle arising from an accident which occurred within three months prior to the taxable purchase.

(6) "Motor vehicle" shall have the same definition as in subdivision (15) of section 4 of Title 23, and shall not include trailer coaches as defined in subdivision (32) of section 4 of Title 23.

(7) "Person"—any individual, firm, partnership, joint venture, association, social club, fraternal organization, estate, trust, fiduciary, receiver, trustee or corporation.

(8) "Title" shall include possession under a sale or purchase which reserves title as security to the seller.—Amended 1969, No. 263 (Adj. Sess.), § 1, eff. April 6, 1970.

§ 8903. Tax imposed

(a) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be four per cent of the taxable cost of the motor vehicle or \$300.00 for each motor vehicle, whichever is smaller.

(b) There is hereby imposed upon the use within this state a tax of four per cent of the taxable cost of a motor vehicle, or \$300.00 for each motor vehicle, whichever is smaller, by a person at the time of first registering or transferring a registration to such motor vehicle payable as hereinafter provided, except no use tax shall be payable hereunder if the tax imposed by subsection (a) above has been paid.

(c) The Vermont registration or transfer of Vermont registration of a motor vehicle shall be conclusive evidence that the purchase and use tax applies as provided in section 8911 of this title.—1959, No. 327 (Adj. Sess.), § 3, eff. March 1, 1960; amended 1961, No. 230, eff. Aug. 1, 1961; 1966, No. 66 (Sp. Sess.), § 2; 1967, No. 116, § 2, eff. April 17, 1967; No. 380 (Adj. Sess.), § 2, eff. July 1, 1968.

§ 8904. Completion of form

(a) Every person selling a motor vehicle in Vermont shall at the time of selling a motor vehicle compute for the purchaser the tax imposed by subsection (a) of section 8903 of this title and complete in its entirety the tax form prescribed and furnished by the commissioner.

(b) When the seller of a motor vehicle fails to fill out the tax form as required in paragraph (a) he shall be subject to the penalties under section 8909 of this title or if he is a registered dealer, the commissioner may suspend the dealer registration. Such suspension shall be for a reasonable time and shall not exceed ten days for each offense and shall be made only after a finding that the failure of such dealer is wilful and intentional and not the result of inadvertence.—1959, No. 317 (Adj. Sess.), § 4, eff. March 1, 1960; amended 1963, No. 113, eff. May 28, 1963.

§ 8905. Collection of tax

(a) Every purchaser of a motor vehicle subject to a tax under subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due, within thirty days of the time of first registering or transferring a registration to such motor vehicle.

(b) Every person subject to a use tax under subsection (b) of section 8903 of this title shall forward such tax form and the tax due to the commissioner with the registration application or transfer, as the case may be, and fee at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

(c) If the tax due under subsections (a) and (b) of this section is not paid as provided, a penalty of an additional one per cent of taxable cost or \$150.00 whichever is smaller.—Amended 1969, No. 276 (Adj. Sess.), § 9; 1975, No. 96, § 2, eff. date, see note set out below.

§ 8906. Tax form contents

Such tax form shall require information as to the purchase price of the motor vehicle, the value of any motor vehicle accepted in trade together with its make, type, serial or identification number and year of manufacture and the make, type, serial or identification number and year of manufacture of the motor vehicle purchased.—1959, No. 327 (Adj. Sess.), § 6, eff. March 1, 1960.

§ 8907. Commissioner, computation of taxable costs

The commissioner may investigate the taxable cost of any motor vehicle transferred subject to the provisions of this chapter. If the motor vehicle is not acquired by purchase in Vermont or is received for an amount which does not represent actual value, or if no tax form is filed or it appears to the commissioner that a tax form contains fraudulent or incorrect information, he may, in his discretion, fix the value of said motor vehicle at the average book value of the same make, type, model and year of manufacture as designated by the manufacturer as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition) or any comparable publication, compute and assess the tax due thereon, and notify the purchaser thereof forthwith by certified mail, and said purchaser shall remit the same within fifteen days thereafter.—1959, No. 327 (Adj. Sess.), § 7, eff. March 1, 1960; amended 1967, No. 116, § 3, eff. April 17, 1967.

§ 8908. —Regulations

Notwithstanding any other provision of law, the commissioner may from time to time make regulations to provide that "taxable cost" shall not reflect a diminution for trade-in arising from a purchase of a motor vehicle in a state which does not allow a deduction for trade-in in the computation of the "taxable cost" or similar tax base in the computation of taxes imposed by a motor vehicle sales and use tax in that state.—Added 1967, No. 116, § 6, eff. April 17, 1967.

§ 8909. Enforcement

If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.—1959, No. 327 (Adj. Sess.), § 8, eff. March 1, 1960; amended 1966, No. 66 (Sp. Sess.), § 4; 1967, No. 116, § 4, eff. April 17, 1967.

§ 8910. Penalties

Any person who wilfully makes a false statement on such tax form prescribed and furnished by the commissioner or any person who wilfully attempts to evade the tax herein imposed shall be fined not more than \$500.00.—1959, No. 327 (Adj. Sess.), § 9, eff. March 1, 1960.

§ 8911. Exceptions

The tax imposed by this chapter shall not apply to:

(1) motor vehicles owned or registered by any state or province or any political subdivision thereof;

(2) motor vehicles owned and operated by the United States of America;

(3) motor vehicles owned and registered by religious or charitable institutions or volunteer fire companies;

(4) motor vehicles owned and operated by a dealer and registered and operated under the provisions of sections 451-468 inclusive of Title 23;

(5) nonregistered motor vehicles other than tow or repairman vehicles;

(6) pleasure cars, the owners of which were not residents of this state at the time of purchase and had registered and used the vehicle for at least thirty days in a state or province other than Vermont;

(7) motor vehicles, title to which on the effective date of this chapter is in the owner seeking registration thereof;

(8) motor vehicles transferred to the spouse, mother, father or child of the donor provided such motor vehicle has been registered in this state in the name of the donor;

(9) pleasure cars acquired outside the state by a resident of Vermont on which a state sales or use tax has been paid by the person applying for a registration in Vermont, providing that the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances. If the tax paid in another state is less than the Vermont tax the tax due shall be the difference;

(10) motor vehicles registered in Vermont by the transferor and transferred between that individual and a business entity controlled by him, if the transfer is exempt under section 351 of the United States Internal Revenue Code in effect July 1, 1966;

(11) motor vehicles owned or purchased in another state by a member of the armed forces on full time active duty or his spouse upon which a purchase, use or sales tax has been paid in another state, except that, if that tax is less than the tax payable in this state but for this subdivision, the tax applies in the amount of the difference;

(12) motor vehicles owned and operated by physically handicapped persons for whom the vehicle's controls have been altered to enable such persons to drive. This exception shall apply only when such handicapped person has been certified exempt from the tax by the commissioner of motor vehicles under the provisions of section 8901 of this title.—1959, No. 327 (Adj. Sess.), § 10, eff. March 1, 1960; amended 1966, No. 66 (Sp. Sess.), § 5; 1967, No. 116, § 5, eff. April 17, 1967.

§ 8912. Allocation of funds

The taxes collected under this chapter shall be paid into and accounted for in the highway fund.—1959, No. 327 (Adj. Sess.), § 11, eff. March 1, 1960.

§ 8913. Fraudulent collection of tax

No person except the commissioner and his authorized representatives may collect or accept payment of any tax imposed by this chapter. Any person so doing shall be presumed to have the intent to convert it to his own use. Any unauthorized person who wilfully collects or accepts payment of such a tax, upon conviction for a first offense, shall be fined not more than \$200.00 or imprisoned for not more than ninety days, or both. Upon each subsequent conviction he shall be fined not more than \$500.00 or imprisoned for not more than one year, or both.—1959, No. 327 (Adj. Sess.), § 12, eff. March 1, 1960.

§ 8914. Refund

Any overpayment of such tax as determined by the commissioner shall be refunded.—1959, No. 327 (Adj. Sess.), § 13, eff. March 1, 1960.

§ 8915. Reciprocal agreements

The commissioner may enter into reciprocal agreements with appropriate officials of any other state or province under which he may waive all or any part of the tax imposed by this chapter upon a similar waiver by such state or province.—Added 1966, No. 66 (Sp. Sess.), § 6.

ADDENDUM B

1975 AMENDMENTS TO VERMONT STATUTES ANNOTATED.
TITLE 32, CHAPTER 219. "MOTOR VEHICLE PURCHASE AND USE TAX"
(amendment to § 8905(a) takes effect July 1, 1976)

§ 8905. Collection of tax

(a) Every purchaser of a motor vehicle subject to a tax under subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

§ 8911. Exceptions

The tax imposed by this chapter shall not apply to:

* * *

(8) motor vehicles transferred to the spouse, mother, father or child of the donor or subsequently transferred among such individuals provided such motor vehicle has been registered in this state in the name of the original donor;

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JEROME J. WELLS,
EDWARD A. SWEETSER,
FRANCES M. BARBEAU,
WALTER HOLMES, CONRAD
MOORE, DAVID N. O'CONNELL,
LAURA MAY NOYES,
RONALD MILES MAGONI,
SHIRLEY A. MARSH, ROBERT
LEE BOOTH, RAYMOND CHESTER
LUCAS, JR.,

Appellants

vs.

JAMES E. MALLOY,
Commissioner of Motor
Vehicles of the State
of Vermont,

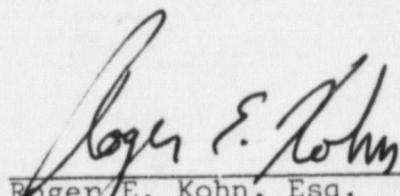
Appellee

DOCKET NO.: 75-7662

CERTIFICATE OF SERVICE

NOW COMES Roger E. Kohn, Esquire, counsel for appellant Jerome J. Wells, and certifies that two copies of Appellants' Brief and one copy of Appendix of Appellants were sent by first-class mail, postage prepaid, to Richard M. Finn, Esquire, Assistant Attorney General, counsel for appellee, at his last known office address, at the Office of Attorney General, Pavilion Office Building, Montpelier, Vermont 05602, on this 20th day of January, 1976.

ROGER E. KOHN
ATTORNEY AT LAW
P. O. BOX 136
HINESBURG, VERMONT
05461


Roger E. Kohn, Esq.
P. O. Box 136
Hinesburg, Vermont 05461